

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION**

**GILBERTO GOMEZ VICENTE, et  
al.,**

*Plaintiffs,*

**V.**

**UNITED STATES OF AMERICA, et  
al.,**

*Defendants.*



**CIVIL ACTION NO. 5:20-CV-00081**

**JOINT ADVISORY TO THE COURT**

Pursuant to the Court's Order entered on March 21, 2022 (Dkt. 71), the parties have conferred thoroughly and in good faith regarding the information requested in the Court's Order and jointly file this advisory in lieu of a status conference in this matter.

### **Status of Remaining Schedule Order Deadlines**

The parties currently expect to comply with the remaining scheduling order deadlines, as follows:

- Amended Pleadings
  - Plaintiffs: April 22, 2022
  - Defendants: May 20, 2022
- Expert Designation
  - Plaintiffs: June 22, 2022
  - Defendants: August 5, 2022
- Plaintiffs' deadline for rebuttal expert opinions: August 19, 2022
- Mediation: September 16, 2022
- Discovery deadline (including depositions of expert witnesses): October 21, 2022
- Dispositive Motions / Motions re Expert Testimony: November 4, 2022
- Joint Pretrial Order/ Motions in Limine/ Jury Instructions
  - Track A (if no dispositive motion): December 20, 2022
  - Track B (dispositive motion filed): March 31, 2023

### **Status of Settlement Negotiations/Mediation**

Plaintiffs and Defendant United States of America (“USA”) have engaged in preliminary settlement negotiations. Specifically, counsel for Plaintiffs and counsel for Defendant USA have discussed the mutual desire to explore the possibility of an early settlement of Plaintiffs’ remaining FTCA claims against Defendant USA and have sought authorization from their respective clients to engage in substantive settlement discussions. All parties have expressed a willingness to mediate to facilitate a possible early settlement if feasible, preferably before initiating multiple and costly depositions. The parties have not yet agreed on a mediator or mediation date but have agreed to exchange names of prospective mediators once all parties are authorized to engage in settlement negotiations.

### **Status of Discovery**

The parties have exchanged significant written discovery and records relating to the investigation of the shooting that is the subject of this lawsuit. Specifically, on December 3, 2021, Defendant USA produced an encrypted thumb drive containing multiple written reports, witness interviews, and forensics files, as well as large video and audio files, among other documents, relating to the U.S. Government’s investigation.<sup>1</sup> The video and audio files are particularly large and require special programs to open and view them. In addition, Defendant USA served objections and responses to Plaintiffs’ interrogatories and requests for production, as well as responses to Defendant Barrera’s requests for production and admission. Defendant Barrera also served objections and answers to Plaintiffs’ interrogatories and requests for

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<sup>1</sup> In late August 2021, following the entry of the protective order (Dkt. 60), Defendant USA had produced a set of documents as part of its initial disclosures, which contained interview transcripts and large video and audio files relating to depositions of material witnesses.

production. Plaintiffs have also produced documents along with their objections and responses to Defendants' written discovery requests.

On February 15, 2022, Defendant USA served a supplemental production containing a large, password-protected audio file. The file had a corrupted password, but the parties were able to resolve the issue via correspondence between counsel by a supplemental production on February 23, 2022. Further, upon inquiry by Plaintiffs' counsel about the decedent's physical cell phone, counsel for Defendant USA directed Plaintiffs to the Texas Rangers, who are in possession of additional documents and evidence relating to the shooting. Plaintiffs have since been in contact with the Texas Rangers, who confirmed they have evidence pertinent to this case and they intend to finish processing it by mid-April 2022 as part of the state's closure of a state investigation into the shooting. Plaintiffs plan to follow up with the Texas Rangers in April to arrange receipt of any available physical evidence.

The parties are currently reviewing and processing the documents and written discovery produced to date. It should be noted that the Bates-number range of documents produced by Defendant USA does not fully reflect the actual number of documents produced. For example, the document Bates-labeled USA 001050 contains 386 pages of internal documents from U.S. Customs and Border Protection ("CBP"), and the document Bates-labeled USA 001052 contains 4 large video files of material witness depositions conducted by the U.S. Department of Justice. The parties anticipate completing written discovery by May 2022, with deposition scheduling to begin in June 2022, assuming the case does not settle. Although the parties have not discussed which witnesses they intend to depose, Plaintiffs currently anticipate deposing 30(b)(6) representatives of CBP, Defendant Barrera, and certain individual agents of CBP or other witnesses who were at or near the scene of the shooting on the day it occurred.

### **Pending or Developing Discovery Disputes**

The parties currently do not have any pending or developing discovery disputes that may require Court intervention. To date, the parties have been able to resolve issues regarding discovery (such as access to encrypted files, corrupted file passwords, and inquiries about documents and tangible things in the possession of other law enforcement agencies) through telephonic or email communications.<sup>2</sup> The parties will continue to strive in good faith to resolve any possible future discovery disputes without Court intervention, but they reserve the right to bring any significant impasse to the Court's attention.

### **Miscellaneous**

Plaintiffs expect to file an amended complaint by April 22, 2022, with the consent of all parties or leave of Court, in compliance with the Court's current Scheduling Order (Dkt. 68).

DATED: March 28, 2022

Respectfully submitted,

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<sup>2</sup> Further, the Court entered a protective order on August 24, 2021 (Dkt. 60) relating to the disclosure of information contained in U.S. Government documents, which has facilitated the production of documents.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on all counsel of record via electronic mail and through the Court's electronic filing system on March 28, 2022.

/s/ Edgar Saldivar  
Edgar Saldivar